

PROPOSED CONSTRUCTION MANAGEMENT  
PROFESSIONAL SERVICES AGREEMENT

Agreement is entered into between the SACRAMENTO METROPOLITAN FIRE DISTRICT (hereinafter "DISTRICT"), a special district organized and existing under the laws of the State of California, and the Construction Manager named below:

\_\_\_\_\_ (hereinafter "Construction Manager").

The term of this agreement is September 1, 2004 through June 30, 2007.

The maximum amount of this agreement is: \$

Pursuant to the provisions of the State of California Government Code Sections 4525 et seq., the DISTRICT does hereby retain the Construction Manager to provide Construction Management Professional Services for the DISTRICT under the terms and conditions of this Agreement. The parties agree to comply with the terms and conditions of the following exhibits that are by this reference made a part of the Agreement:

- Exhibit A – Scope of Work
- Exhibit B – Budget Detail and Payment
- Exhibit C – General Terms and Conditions
- Exhibit D – Construction Manager's Project Team
- Exhibit E – Construction Manager's Fee Schedule

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Dated: \_\_\_\_\_ (Construction Management firm name)

By: \_\_\_\_\_

(Name typed)

Title: \_\_\_\_\_

Dated: \_\_\_\_\_ SACRAMENTO METROPOLITAN FIRE DISTRICT, a special district organized and existing under the laws of the State of California,

By: \_\_\_\_\_

Rick Martinez, Fire Chief

## Exhibit A – Scope of Work

### I. SCOPE OF SERVICES

The Construction Manager shall provide professional construction management services to the District including pre-construction services, construction phase administration services, construction phase quality control services, and final acceptance/closeout services for the construction of up to eight (8) fire stations in various locations within Sacramento County.

The Construction Manager will work closely and coordinate with the District's Design Contractor, who has been retained under separate contract to perform design services, construction support, and other related services for this project.

The construction of the fire stations will be completed under separate public works contracts as administered by the District with assistance from the Design Contractor and the Construction Manager under a strict schedule. It is anticipated that all 8 fire station projects will be completed and ready for occupancy prior to June 30, 2007.

Each of the fire station projects will include a main prototypical fire station building with drive through apparatus bays, a utilities building, demolition (as required), grading, drainage, paving, utilities, stand-by power, traffic signal system, above ground fuel system, landscaping, irrigation, fencing, security system, alarm/alerting system, and other related items.

The District intends to utilize 3 different prototypical design types including a fire station with 2 bays and 8 beds (2:8 type), a fire station with 3 bays and 10 beds (3:10 type), and a fire station with 4 bays and 12 beds (4:12 type). The District anticipates the following quantity and variety of station types will be designed and constructed as a result of this assignment:

- 1 ea. 2:8 type, main building approximately 9,200 SF,
- 6 ea. 3:10 type, each main building approximately 13,100 SF, and
- 1 ea. 4:12 type, main building approximately 16,300 SF.

The District reserves the right to add to or delete from the overall number of fire stations to be designed and constructed. The District also reserves the right to adjust the quantities of each type of fire station that will be designed and constructed. Furthermore, the District may opt not to construct one or more fire stations that have been designed under this assignment and the District may modify the overall project schedule as needed.

## II. Definitions

For the purpose of this Agreement the following definitions shall apply:

- A. DISTRICT means the Sacramento Metropolitan Fire District.
- B. DISTRICT'S PROJECT MANAGER means the District employee named in this Agreement to be the exclusive authorized representative of the District for the purposes of administering this Agreement.
- C. CONSTRUCTION MANAGER, wherever used herein, shall mean (name of firm), a professional corporation rendering professional construction management services, including (name of firm)'s employees and subcontractors as listed in Exhibit D.
- D. DESIGN CONTRACTOR is the professional design services contractor and its subcontractors retained under separate agreement with the District to:
  - i. complete architectural and engineering plans and specifications,
  - ii. develop project cost estimates,
  - iii. obtain all design permits,
  - iv. provide bidding support,
  - v. provide construction support,
  - vi. develop and maintain project schedules through completion of Construction Documents and the bid award phase, and
  - vii. provide other services as required by the District.
- E. GENERAL CONTRACTOR is the prime contractor, including its employees and subcontractors, awarded the public works contract by the District to construct a fire station project. Since the District intends to construct up to eight fire stations under this Agreement, there could be up to eight different General Contractors under this assignment.
- F. PROJECT will be each individual fire station designed and constructed under this Agreement as determined by the District.
- G. CONSTRUCTION PHASE for each project will commence with the award of the public works construction contract and will end 30 days after final payment to the Public Works Contractor is due.
- H. SCHEMATIC DOCUMENTS include design studies incorporating the District's program requirements and facilities design criteria into completed building and site utilization plans, floor plans, elevations, sections, perspectives, and other drawings necessary to describe each project, outline specifications, presentation materials, room tabulations, and an estimate of probable construction costs for each project. The Design Contractor is responsible to complete the Schematic Documents.
- I. DESIGN DEVELOPMENT DOCUMENTS include site plans, landscape plans, architectural, structural, mechanical, and electrical

floor plans, elevations, cross-sections, and other drawings necessary to convey the concept of each project, outline specifications, room tabulations, and a detailed construction cost estimate, which upon approval by the District will become the Construction Project Budget. The Design Contractor is responsible to complete the Design Development Documents.

- J. CONSTRUCTION DOCUMENTS include final contract drawings and technical specifications sufficient in detail to describe the requirements for construction by public works contract for each project, and a detailed construction cost estimate. The Design Contractor is responsible to complete the Construction Documents.
- K. MASTER SCHEDULES will be created and maintained for each project in the latest version of Microsoft Project or some other similar, District approved, electronic scheduling tool. The scheduling tool must be able to depict actual vs. planned or scheduled activities and critical milestones.
- L. EXTRA SERVICES, applies only when authorized by means of a written amendment to this Agreement. Extra Services will be negotiated with the District on a case-by-case basis and will be compensated in accordance with rates as established in "Exhibit E – Construction Manager's Fee Schedule".

### III. SCHEDULE OF WORK

- A. Time is of the essence of this Agreement. The Construction Manager shall commence work under this Agreement immediately upon the execution of the Agreement and upon receipt of a written Notice to Proceed from the District.

### IV. BASIC SERVICES

- A. Construction Manager's Project Team
  - 1. The Construction Manager shall provide, maintain, and update as required a list of names of employees and/or subcontractors that will be employed to perform the actual work for the Construction Manager under this Agreement as "Exhibit D – Construction Manager's Project Team".
  - 2. The Construction Manager shall provide to the District a brief statement of qualifications for each professional employee or subcontractor assigned or utilized under this Agreement, including, but not limited to, all principals, supervisors, inspectors, document review team members, construction managers, or project managers.

## B. Pre-Construction Services

1. Design Development Document Review – Upon request by the District, the Construction Manager shall conduct site visits, complete a review of the Design Development Documents, and prepare a written report for each project to be submitted to the District and the Design Contractor that summarizes areas of possible conflicts, such as differing site conditions, coordination between the various design disciplines, incompleteness of details, lack of continuity, confusing or conflicting issues, scheduling issues, or other areas of concern. The Construction Manager shall also review the construction cost estimate for each project for reasonableness, completeness, and accuracy and present the findings in the report including factors related to alternative designs or materials and possible opportunities for project economies. The report shall include recommendations to mitigate any areas in need of attention. The Construction Manager shall meet with the District and the Design Contractor to present the report findings and recommendations for each project.
2. Construction Document Review – Upon request by the District, the Construction Manager shall complete a review of the Construction Documents, and prepare a written report for each project to be submitted to the District and the Design Contractor that summarizes items that adversely affect constructability, cost, or schedules. The Construction Manager shall also review the construction cost estimate for each project for reasonableness, completeness, and accuracy and present findings in the report for any items in need of attention, including opportunities for project economies. The Construction Manager shall meet with the District and the Design Contractor to present the report findings and recommendations for each project.
3. Bidding Support – Upon request by the District, the Construction Manager shall assist the District and the Design Contractor for each project by:
  - a. Reviewing bids, advising on acceptability of subcontractors and suppliers proposed by contractors, and making recommendations for the award of the contract or the rejection of all bids.

## C. Construction Phase Administrative Services

1. A Master Schedule will be created and maintained by the Design Contractor through the bid award phase for

each project. The General Contractor will be responsible to manage and update the Master Schedule for each project throughout the entire Construction Phase. The Master Schedules will be updated and distributed by the General Contractor monthly, or less frequently as approved by the District in the event there are no changes to the schedule. Distribution of the Master Schedules will be made electronically to the District, the Design Contractor, and the Construction Manager. The Construction Manager shall review the Master Schedule and monitor the General Contractor's conformance with the schedule.

2. The Design Contractor shall organize and conduct a pre-construction conference for each project with the General Contractor, the Construction Manager, and the District to review the public works contract requirements, project schedule, security, safety, and other related issues in advance of any on-site activity by the General Contractor. The Design Contractor will produce and distribute minutes of the conference.
3. The Construction Manager shall conduct weekly or bi-weekly project status meetings, as required by the District, for each project with the General Contractor to discuss such matters as procedures, progress, quality control, and scheduling. The Construction Manager shall within 48 hours of the meeting prepare and distribute minutes of the meeting to the District, the Design Contractor, and the General Contractor.
4. The Design Contractor shall conduct monthly pay status meetings to review work completed to date, review General Contractor pay requests, and review other matters related to work progress. The Construction Manager will review certified payrolls, review materials on hand, review work completed to date, attend the pay status meetings and advise the District and the Design Contractor on the percentages of work completed by the General Contractor each month in conformance with the public works contract documents.
5. The Construction Manager shall monitor and audit any certified payroll records of the General Contractor to ensure compliance with California State Law.
6. The Construction Manager shall maintain records at each project job site to be readily available to the District including at least one set of Construction Documents, the Master Schedule for the project, a log and copies of all requests for clarification or information, all responses

to the requests for clarification or information, all change order requests, all responses to change order requests, all submittals, all submittal reviews, approvals, or denials, all daily activity logs, photographic records, pay requests, pay authorizations, and other related items. At the completion of each project Construction Phase, the Construction Manager shall deliver the original records to the District. The records shall be organized by subject with tabs and arranged in chronological order in a neat and orderly fashion in a 3-ring binder or some other District approved arrangement.

7. The Design Contractor will utilize a management information system to organize, track, and file paper and electronic documents, correspondence, and forms associated with each project. The management information system will be made available and readily accessible to the District and the Construction Manager for their use.
8. The Design Contractor will provide District approved administrative forms for such things as requests for clarification, change orders, submittals, daily logs, payment authorization, meeting minutes, and other related matters.
9. The Construction Manager shall furnish and provide to the District photographic documentation of each project construction site prior to and throughout the construction phase utilizing videotape and digital still photographic mediums. The number of photographs shall be sufficient to document work progress, quality, and features, especially those work items that are ultimately out of view, buried, or covered.
10. At the completion of the Construction Phase for each project, the Construction Manager shall provide the District with a photo history binder that contains representative pictures depicting the entire project progress that are dated and labeled and in chronological order of construction.
11. The General Contractor shall maintain one set of Construction Documents as "record" documents with up-to-date information regarding all addendum, substitutions, clarifications, and change orders. The Construction Manager will periodically and at least once per month review the record documents for accuracy and completeness. Prior to the end of the Construction Phase, these "record" documents shall be provided to the Design Contractor who will transfer the changes to

the electronic file copies of the original construction documents.

D. Construction Phase Quality Control Services

1. The Construction Manager shall foster open and effective communication with the General Contractor, the Design Contractor, and District for the successful completion of each project.
2. The Construction Manager shall assign an employee as an inspector to be present at every project site for a period of at least two hours for every day that the General Contractor is also on site and working. The purpose of the inspections is to provide assurance to the District and the Design Contractor that the work performed by the General Contractor is in full compliance with the requirements of the public works contract for each project. The Construction Manager will coordinate full time inspection by the District's testing lab for critical work activities such as placement of concrete footings and slabs, prior to and during backfill and/or compaction operations, and other related matters. The Construction Manager's inspectors must be experienced and certified by the International Code Council (ICC) or an equivalent certification for the types of work they inspect. The District reserves the right to request the Construction Manager to assign a different inspector to any of the projects upon the sole discretion or opinion of the District.
3. The Construction Manager shall create and maintain a daily log that includes, but is not limited to, the date and time of arrival and departure from the job site by the Construction Manager; items of work or materials inspected, their condition and conformance or non-conformance with the public works contract requirements; any direction provided to the General Contractor; and other pertinent information deemed necessary by the District to monitor the work progress. The Construction Manager's daily log shall be made available to the District for periodic review.
4. The Construction Manager shall bring to the General Contractor's attention any and all findings pertaining to work or materials that fail to meet the requirements of the public works contract documents. Such findings and notification to the General Contractor shall be documented in writing in the Construction Manager's

daily log. Failure by the General Contractor to correct the work to conform to the public works contract documents shall be documented again in writing to the General Contractor, the District, and the Design Contractor.

5. The Construction Manager shall evaluate the adequacy of the General Contractor's personnel, sub-contractors, equipment, and materials to meet the construction and Master Schedule. The Construction Manager shall make recommendations to the District to remedy scheduling problems or other deficiencies with the quality or progress of the work.
6. The Construction Manager shall assist the District and the Design Contractor with the resolution of any disputes involving the public works contract requirements.
7. The Construction Manager shall assist the District and the Design Contractor with review and evaluation of any requests for clarification, information, or claims.
8. The General Contractor shall maintain a daily log for every day worked for each project. The daily log shall include, but not be limited to, such items as duration of work, number and type of employees or subcontractors on the job, deliveries, quantities of items such as yards delivered, standby time, visitors to the job site, weather conditions, and other critical items. The Construction Manager shall receive and review the daily log for the previous workday for completeness and accuracy. Any discrepancies with the daily log shall be immediately brought to the attention of the General Contractor by the Construction Manager for resolution.
9. The Construction Manager shall review the safety program developed by the General Contractor and his sub-contractors for the purposes of coordination. The Construction Manager's responsibility for safety coordination does not extend to direct control over or charge of acts by the General Contractor, his employees, or sub-contractors, or anyone else not directly employed by the Construction Manager. However, any safety violations or concerns observed by the Construction Manager shall be immediately communicated to the General Contractor and the District and followed up in writing to document the concerns.
10. The General Contractor shall obtain and prominently post all required construction and building permits and approvals in advance of any work covered by the permit that is actually undertaken including, but not limited to,

permits for utility connections, traffic control, building departments, or other regulatory entities. The Construction Manager shall review the permits for completeness and retain copies of all permits at each project site.

11. The Construction Manager shall coordinate with the General Contractor and the Design Contractor and attend inspections by building department officials, utility companies, the District, and other control entities and shall document all such inspections.
12. The Construction Manager shall monitor the progress of construction and advise the District and the Design Contractor of any changes to the Master Schedule.
13. The Construction Manager shall coordinate testing of materials as required by the public works contract documents.

E. Final Acceptance/Close-Out

1. Upon consultation and determination with the Design Contractor that the project is considered substantially complete, the Design Contractor shall conduct a substantial completion inspection followed by a final inspection with the General Contractor. The Construction Manager will assist the Design Contractor with both inspections and shall recommend what, if any, items will be placed on a punch list of construction or material deficiencies for resolution by the General Contractor. The Construction Manager shall facilitate resolution and completion of the list of items on the punch list.
2. The Construction Manager shall notify the District and the Design Contractor in writing regarding a recommendation for final approval and acceptance of each project, and to recommend release of final payment and any withholds to the General Contractor.
3. The Construction Manager shall assist the General Contractor and the District with start-up, operation, and debugging of utilities, operation features, equipment, and systems installed for each project. The Construction Manager shall document any deficiencies noted and facilitate resolution and completion with the General Contractor.
4. The Construction Manager shall collect from the General Contractor all warranties and guarantees for work and materials required in the public works contract documents and shall deliver all such items to the Design Contractor for review prior to end of the Construction

Phase. Upon review and approval by the Design Contractor, these items will then be delivered to the District.

5. The Construction Manager shall deliver all project documentation, keys, manuals, and other related items to the District prior to the end of the Construction Phase.

## Exhibit B – Budget Detail and Payment

### I. MAXIMUM AMOUNT OF AGREEMENT

- A. The maximum amount of this Agreement shall not exceed the sum of \$\_\_\_\_\_ unless this Agreement is otherwise amended.

### II. PAYMENT

- A. The consideration to be paid the Construction Manager, as provided herein, shall be full compensation for all of the Construction Manager's services and expenses, direct or indirect, including costs incidental to providing services.
- B. The District expects a total of 8 fire stations to be completed under this Agreement. The District reserves the right to add or delete specific services required as described within this Agreement for any given project upon written notification to the Construction Manager.
- C. The District shall compensate the Construction Manager for services requested by the District and actually performed by the Construction Manager under this Agreement based upon the number of actual hours worked by the various classifications and at the rates as indicated in "Exhibit E – Construction Manager's Fee Schedule", which is incorporated herein. Payment will ordinarily be based upon normal hourly rates. Overtime rates for payment will only be authorized by the District on a case-by-case basis and only if the Construction Manager requests and the District approves the overtime pay in advance of the overtime being worked. In any event, the District will only compensate for overtime in the event the total number of regular hours worked for any given employee exceeds 40 hours per week. The Construction Manager must provide the District in writing with the reason(s) and justification for any requested overtime.
- D. The Construction Manager may adjust the fee rates contained in "Exhibit E – Construction Manager's Fee Schedule" once annually effective July 1 of each year by an amount not to exceed the Consumers Price Index (CPI) percentage increase over the previous year.
- E. Extra Services, if applicable and approved by amendment to this Agreement, will be negotiated and compensated based upon the number of actual hours worked by the various classifications and at the rates as indicated in "Exhibit E – Construction Manager's Fee Schedule".
- F. Neither the District's review, approval of, nor payment for any of the services required under this Agreement shall be construed to operate as waiver of any rights under this Agreement or of any cause of actions arising out of the performance of this Agreement.

### III. PAYMENT METHOD

- A. The Construction Manager shall invoice the District not more than once per month, in arrears, in a format that is approved in advance by the District to distinguish the types of services rendered for each individual project and to reflect the 10 percent retention. Each invoice shall include the purchase order, a project number, an amendment number (if applicable), and the Construction Manager's Federal Employer Identification Number (FEIN).
- B. Each invoice shall be submitted signed by an authorized officer of the Construction Manager's firm.
- C. Each invoice shall be submitted to the District's Project Manager for review and authorization for payment. In the event the District's Project Manager disputes any information contained within the invoice, he shall notify the Construction Manager in writing within 10 working days of receipt of the invoice and the Construction Manager shall submit a revised invoice to reflect any necessary changes. If the Construction Manager disputes the findings or interpretation of the invoice by the District's Project Manager, the Construction Manager may file a formal dispute as described in "Exhibit C – General Terms and Conditions, under item XX. Claims and Disputes".
- D. Upon approval of the invoices by the District, the District agrees to make monthly payment for the amount of services actually performed less 10 percent retention. The final 10 percent retained will be paid upon the completion and District's acceptance or termination of each individual project.

## **Exhibit C – General Terms and Conditions**

### **I. INDEMNIFICATION**

The Construction Manager agrees to indemnify, defend, and save harmless the District, its officers, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Construction Manager to the extent that any of the above are caused by the negligent acts, errors or omissions of the Construction Manager during the performance of this Agreement. The Construction Manager shall not be obligated to indemnify the District for the District's own negligence.

### **II. ASSIGNMENT**

This Agreement is not assignable by the Construction Manager, either in whole or in part, without the written consent of the District.

### **III. ENTIRE AGREEMENT**

This document contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement.

### **IV. AMENDMENT**

No alteration or variation of the terms and or conditions of this Agreement shall be valid unless made in writing and signed by the parties thereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

### **V. INSURANCE REQUIREMENTS**

During the entire term of the Agreement, the Construction Manager shall maintain the following insurance:

- a. Scope and Limits of Insurance: the Construction Manager shall maintain the following insurance policies in the limits described below:

- (1) Professional Liability (Errors and Omissions) Insurance with limits of Two Million Dollars (\$2,000,000.00) per claim/annual aggregate.
  - (2) Commercial General Liability Insurance with limits of One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) annual aggregate.
  - (3) Worker's Compensation Insurance with statutory limits.
- b. All Coverages: Each insurance policy required by this Agreement shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to the District. In addition, the Construction Manager agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been given to the District and the District approves the reduction in coverage or limits in writing. The Construction Manager further agrees that it shall not increase any deductibles or self-insured retention's on any such policy except after thirty (30) days prior written notice has been given to the District and the District approves such increase in writing.
- c. Verification of Coverage: The Construction Manager shall furnish the District with certificates of insurance showing compliance with the above requirements prior to the commence of any work. The certificates shall set forth a valid policy number for the District, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates are to be forwarded to the District's Project Manager designated in the Agreement.

## **VI. PREVAILING WAGES**

The Construction Manager will be subject to Federal Fair Labor Standards and California Prevailing Wage Laws.

## **VII. LICENSING**

The Construction Manager shall, without expense to the District, be responsible for obtaining and maintaining any licenses and permits and for complying with any applicable Federal, State, or municipal laws, codes, and regulations, as necessary for the prosecution of the Construction Manager's work.

#### **VIII. RELEASE OF INFORMATION**

The Construction Manager shall not make any public information release in connection with services performed under this Agreement without advance written permission from the District.

#### **IX. NONDISCRIMINATION CLAUSE**

- A. During the performance of this contract, the Construction Manager and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, religion, color, ancestry, religious creed, national origin, physical or mental disability (including HIV and AIDS), medical condition, age, marital status, sexual orientation, denial of family and medical care leave and denial of pregnancy disability leave. The Construction Manager and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Construction Manager and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Construction Manager and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The Construction Manager shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

#### **X. TERMINATION**

- A. The District reserves the right to terminate this Agreement upon thirty (30) days written notice to the Construction Manager. The Construction Manager may submit written request to terminate this Agreement only if the District should substantially fail to perform its responsibilities as provided herein.
- B. If terminated, the Construction Manager will be compensated for cost incurred up to the notice of the termination. In no event shall payment for such costs exceed the current contract amount. All costs shall be subject to audit by the District.
- C. The District may terminate this Agreement and be relieved of the payment of any consideration to the Construction Manager should the Construction Manager fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due the Construction Manager under this Agreement, and the balance, if any, shall be paid the Construction Manager upon demand.
- D. In the event of termination, whether for convenience or failure to perform, the Construction Manager shall deliver forthwith to the District all finished or unfinished studies, reports, special forms, schedules, designs, data, surveys, calculations, drawings, maps, models, photographs, electronic files and any other information pertaining to or prepared by the Construction Manager under the terms of the Agreement.
- E. In the event of termination, if the District should determine to complete the original project or substantially same project, the District shall have the right to use any original schedules, documents, photographs, or other items prepared under this Agreement by the Construction Manager who shall make them available to the District upon request without additional compensation. The District agrees to make no demand on the Construction Manager for responsibility for the District's use of such materials for any other District work which is not the subject of an agreement between the District and the Construction Manager for such use.

## **XI. RECORD RETENTION AND AUDITS**

The Construction Manager agrees that the District or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement, upon 48 hours notice. The Construction Manager agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Construction Manager agrees to allow auditor(s)

access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Construction Manager agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Agreement. (reference Government Code (GC) Section 8546.7; Public Contract Code (PCC) Section 10115 et seq.; and California Code of Regulations (CCR) Title 2, Section 1896)

## **XII. OWNERSHIP OF MATERIALS**

- A. All materials and documents developed in the performance of this Agreement are the property of the District. The District shall have unlimited rights, for the benefit of the District, in all drawings, designs, specifications, notes, and other work developed in the performance of this Agreement, including the right to use same on any other District work at no additional cost to the District. The Construction Manager agrees to and does hereby grant to the District a royalty-free license to all such data which the Construction Manager may cover by copyright and to all designs as to which the Construction Manager may assert any rights or establish any claim under the patent or copyright laws. The Construction Manager agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the District. The District agrees to make no demand on the Construction Manager for responsibility for the District's use of such materials for any other District work that is not the subject of an agreement between the District and the Construction Manager for such use.
- B. If the Construction Manager performs the work required under this Agreement with the assistance of electronic technology, the Construction Manager shall deliver to the District, on request, the tape or disk that contains the data files and shall specify the format and supplier of the software and hardware necessary to use the files.
- C. The District does not assume any obligation to employ the Construction Manager's services or pay Construction Manager royalties of any type as to future programs that may result from the work performed under this Agreement.

## **XIII. WAIVER**

Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

#### **XIV. BROKERAGE OR CONTINGENT FEES**

The Construction Manager warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon understanding or agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Construction Manager for the purpose of securing business. For breach or violation of this warranty, the District shall, in addition to other remedies provided by law, have the right to terminate this Agreement without liability, paying only for the work actually performed, or otherwise recover the full amount of such commission, brokerage, or contingent fee.

#### **XV. RELEASE OF CLAIMS**

The acceptance by the Construction Manager of final payment shall be and shall operate as a release to the District of all claims for payment of additional fees by the Construction Manager.

#### **XVI. CHILD SUPPORT COMPLIANCE ACT**

For any contract in excess of \$100,000, the Construction Manager acknowledges in accordance with California Public Contract Code Section 7110, that: (a) The Construction Manager recognizes the importance of child and family support obligations and shall fully comply with all applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and (b) the Construction Manager, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

#### **XVII. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

The Construction Manager, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against the Construction Manager within the immediately preceding two-year period because of the Construction Manager's failure to comply with an order of a Federal court which orders the Construction Manager to

comply with an order of the National Labor Relations Board (Public Contract Code Section 10296).

#### **XVIII. STATEMENT OF COMPLIANCE**

The Construction Manager's signature affixed hereon shall constitute a certification under the penalty of perjury under the laws of the State of California that the Construction Manager has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations Section 8103.

#### **XIX. AIR OR WATER POLLUTION CERTIFICATION**

By signing this agreement, the Construction Manager swears, under penalty of perjury, that the Construction Manager is not: (1) in violation of any order or resolution not subject to review promulgated by the California Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

#### **XX. CLAIMS AND DISPUTES**

The parties hereto mutually agree that the resolution of any claim or disputes arising under this Agreement shall be resolved pursuant to the following:

- A. If the Construction Manager disputes any action by the District's Project Manager arising under or out of the performance of this Agreement, the Construction Manager shall notify the District's Project Manager in writing and request a claims decision. The District's Project Manager shall issue a decision in writing within 30 days of the Construction Manager's notice. If the Construction Manager disagrees with the District's Project Manager decision, the Construction Manager shall submit a formal claim to the District's Fire Chief. The District's Fire Chief shall issue a decision within 15 days of receipt of the Construction Manager's formal claim. The decision of the District's Fire Chief shall be final and conclusive on the claim unless the decision is arbitrary, capricious, or grossly erroneous or if any determination of fact is unsupported by substantial evidence. The decision may encompass facts, interpretations of the Agreement, and determinations or

applications of the law. The decision shall be in writing following an opportunity for the Construction Manager to present oral or documentary evidence and arguments in support of the claim. This administrative process must be followed before taking any court action.

- B. In the event of litigation between the Construction Manager and the District after all administrative remedies have been exhausted, litigation shall be commenced in an appropriate court of competent jurisdiction within Sacramento County in the State of California.
- C. The Construction Manager agrees to proceed with all work ordered by the District pending the outcome of any claim, dispute, or litigation.

## **XXI. ENFORCEMENT OF AGREEMENT**

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. The District and Construction Manager shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Sacramento County in the State of California, and the parties consent to jurisdiction over their person and over the subject matter on any litigation in such courts, and consent to service of process issued by such courts.

## **XXII. ATTORNEYS' FEES**

In any litigation, arbitration or other legal proceeding that may arise between any of the parties hereto, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable

attorneys' fees in addition to any other relief to which such party may be entitled.

### **XXIII. ACCESS TO PROJECT SITES**

The Construction Manager will be provided access to all project sites during normal District business days, Monday through Friday, 8:00 AM to 5:00 PM, excepting District holidays. Arrangements for access shall be made with the District's Project Manager.

### **XXIV. DISTRICT'S PROJECT MANAGER**

For the purposes of this Agreement, the District's authorized representative shall be the District's Project Manager and is herein named as:

Chuck Horel, Project Manager  
Telephone: (916) 566-4317

The District's Project Manager is not authorized by the District to make any commitments or changes that will affect the price, terms, or conditions of this Agreement absent an amendment. The District will notify the Construction Manager in writing in the event of any change to the person designated as the District's Project Manager.

### **XXV. NOTICES**

Any notice by either party shall be given in writing either by personal service, overnight delivery service, or by depositing it in a United States mail deposit box with the postage thereon fully prepaid and addressed as set forth below in this Agreement, or addressed to any other place or places the District or the Construction Manager may by written notice give to the other:

Construction Manager:

(Name and address)

District:

Sacramento Metropolitan Fire District  
2101 Hurley Way  
Sacramento, CA 95825-3208  
Attention: Chuck Horel, Project Manager

### **Exhibit D – Construction Manager’s Project Team**

<u>Employee Name</u>	<u>Title</u>	<u>Address</u>	<u>Phone No.</u>
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## **Exhibit E – Construction Manager’s Fees**

(rates as provided by the Construction Manager and negotiated with the District – The Construction Manager is to list classifications and rates for each member of the Project Team that could likely perform services under this Agreement)

The following rates for the classifications and disciplines as indicated include all costs for the services provided including, but not limited to, overhead, administrative costs, and profit and shall be utilized in arriving at the negotiated fee for any services:

<u>Classification</u>	<u>Hourly Rate</u>	<u>Overtime Rate</u>
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Billable Rates effective July 1, 2004 through 6-30-2005: